



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1998

Mr. Bob Ramirez
Escamillo & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR98-0309

Dear Mr. Ramirez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112033.

The Eagle Pass Independent School District (the "district") received a request for various documents, including the complete personnel file of a district employee. It is our understanding that only the personnel file information is at issue.¹ You assert that information in the employee's personnel file is excepted from disclosure under sections 552.101 and 552.102 of the Government Code, and also the provisions of sections 552.024 and 552.117 of the Government Code. You submitted to this office for review documents marked to show your asserted exceptions.

The information at issue includes employee evaluations. You argue that section 21.355 of the Education Code, in conjunction with section 552.101 of the Government Code, excepts the evaluations from disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 21.355 provides that, "[a]ny document evaluating the performance of a teacher or administrator is confidential." In Open Records Decision No. 643 (1996) (copy enclosed), this office determined that an administrator for purposes of section 21.355 is one who is required to hold and does hold an administrator's certificate

¹We assume that the other requested information has been provided to the requestor.

under subchapter B, chapter 21 of the Education Code, and who also is performing the functions of an administrator at the time of the evaluations. This employee does not appear to fit the definition of an administrator for purposes of section 21.355. Thus, the evaluations are not confidential under section 21.355.

We marked some documents in the personnel file as medical records that are confidential under the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Section 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

We reviewed the documents that you marked as medical records and agree that these records must be withheld from disclosure. Open Records Decision No. 598 (1991) (access to medical records governed by MPA rather than Open Records Act).

You submitted to this office information that was obtained from the Department of Public Safety ("DPS") which concerns the driving record of the employee. You assert that these documents are protected from disclosure as criminal history record information ("CHRI"). Section 411.083 of the Government Code deems confidential CHRI that the DPS maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). However, driving record information is not confidential CHRI under chapter 411. *See* Gov't Code § 411.082(2)(B).

We note that the driving record information and the other personnel records contain the employee's driver's license number, which is confidential under 552.130 of the Government Code. Section 552.130(a) provides that information is excepted from disclosure if it relates to

(1) a motor vehicle operator's or driver's license or permit issued by an agency of the state;

- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Section 552.130(b) provides that this type of information is subject to release only as provided by Chapter 730 of the Transportation Code. Since it does not appear that the employee's drivers' license number is subject to release to this requestor under chapter 730, we agree that the employee's driver's license number, wherever found in the records, is protected from disclosure. We indicated on the submitted records where the driver's license number is found.

You assert that the home address and home telephone number of the employee is protected from disclosure pursuant to section 552.024 and 552.117. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. This election must be made by the employee prior to the date of the request for information. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). Because the employee opted, prior to the request, to keep his home address and home telephone number confidential, his home address and home telephone number must be withheld from disclosure.²

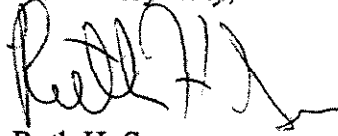
In your letter, you stated that section 552.102 may be applicable to protect the personnel file from disclosure. Section 552.102 protects from disclosure information in a personnel file if release "would constitute a clearly unwarranted invasion of personal privacy." The test to determine whether information is protected from disclosure under this aspect of section 552.102 is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The records at issue relate to the job performance and work behavior of a public servant. Thus, except for the information discussed previously as being protected from disclosure, the submitted personnel information must be disclosed. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is narrow).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

²We also note that social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code.

determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 112033

Enclosures: Marked documents
Copy of Open Records Decision No. 643 (1996)

cc: Mr. Tony Conners
2525 Wallingwood Drive, Building 14
Austin, Texas 78746
(w/o marked documents; w/copy of Open Records Decision No. 643 (1996))